

**ORDINANCE NO. O-18-648**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, AMENDING MAPLE VALLEY MUNICIPAL CODE CHAPTER 5.35 TO ADDRESS REQUIREMENTS IMPOSED BY CHAPTER 35.90 RCW CONCERNING BUSINESS LICENSE THRESHOLDS FOR BUSINESSES ENGAGING IN THE CITY BUT NOT PHYSICALLY LOCATED WITHIN THE CITY; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND REVISIONS BY THE CODE REVISER.**

**WHEREAS**, in the 2017 Legislative Session, the State Legislature passed Engrossed House Bill 2005, which amended Chapter 35.90 RCW and required cities, like the City of Maple Valley, to amend their business licensing codes; and

**WHEREAS**, EHB 2005 mandated that cities may only impose business licensing requirements on individuals or businesses “engaging in business within the city;” and

**WHEREAS**, for those business that “engage in business” within a city, but are not physically located within city limits, EHB 2005 mandated that cities establish a minimum dollar threshold below which the business is exempt from the licensing requirement, or required to obtain a license but exempt from paying the licensing fee; and

**WHEREAS**, EHB 2005 requires cities with business licenses requirements to establish a workgroup to create a model business license with a licensing threshold by July 2018 for adoption by all business license cities by January 1, 2019; and

**WHEREAS**, Section 8 of EHB 2005 required cities to work through the Association of Washington Cities (AWC) with input from the business community to develop a model ordinance for business licensing by July 1, 2018 with a focus on determining a threshold for when a license should be required for out-of-city businesses; and

**WHEREAS**, the Association of Washington Cities (AWC), with input from participating cities and the business community, created a model ordinance in response to the requirements imposed by RCW 35.90 by defining the term “engaging in business” and by addressing the threshold limit below which a business not located in the city, but doing business within the city, is either exempt from obtaining a license or is required to obtain a license but is exempt from paying the licensing fee; and

**WHEREAS**, EHB 2005 set a deadline of October 17, 2018 for those cities like Maple Valley, who are part of the State Business License Service, to adopt an ordinance satisfying the requirements set forth in the new law; and

**WHEREAS**, the proposed ordinance incorporates the AWC model definition of “engaging in business” and the AWC recommended threshold of \$2,000 for those businesses engaging in business in Maple Valley but who are not physically located in Maple Valley; and

**WHEREAS**, the proposed ordinance requires those business below the \$2,000 threshold to obtain a business license but without having to pay the licensing fee;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, DO ORDAIN AS FOLLOWS:**

**Section 1. Amendment:** Chapter 5.35 of the Maple Valley Municipal Code entitled “Business License” is hereby amended as follows (deleted text in ~~striketrough~~, and added text in underline):

### **Chapter 5.35 BUSINESS LICENSE**

Sections:

5.35.010	Definitions
5.35.020	Business license required
5.35.030	Exemptions.
5.35.040	Issuance of licenses – Procedures and fees.
5.35.050	Posting of license.
5.35.060	Change of place of business.
5.35.070	Ownership change – License not transferable.
5.35.080	Fraudulent use of business license.
5.35.090	Revocation of business license.
5.35.100	License renewal.
5.35.110	Compliance with codes required.
5.35.120	Notice of noncompliance – Revocation – Final action.
5.35.130	Appeal to Hearing Examiner.
5.35.140	Penalties and enforcement.
5.35.150	City Manager authorized to enter into State of Washington Department to of Revenue Business Licensing Service agreement.

#### **5.35.010 Definitions.**

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

A. “Business” includes, unless otherwise exempted herein, all activities, occupations, services, pursuits or professions located within the City, with the object of gain, benefit, profit, or advantage to the person or entity engaging in the same, or to any other person or class, directly or indirectly, for which a State of Washington business license is required.

Subject to Chapter [5.05](#) MVMC it does not include persons conducting garage sales upon their residential real property. It does not include wholesale distributors selling products to businesses within the City unless said distributor has an office, warehouse or other business establishment located within the City. It does not include “licensee” (as defined in RCW [18.85.011](#)(13)), or “real estate firm” (as defined in RCW [18.85.011](#)(17)) unless the real estate office of the “designated broker” (as defined in RCW [18.81.011](#)(10)) is located within the City; in such case the designated broker must obtain a business license. Traveling salespersons (“peddlers”) also need to comply with Chapter [5.25](#) MVMC, Transient Sales, and obtain a peddler’s license prior to any sales occurring in Maple Valley.

B. “City” means the City of Maple Valley.

C. ~~“Engaged in business” means commencing, conducting or continuing in business as defined herein.~~ “Engaging in business.” The term “engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(1) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” above. If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(2) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(I) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(3) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Conducting advertising through the mail.

(g) Soliciting sales by phone from a location outside the City.

(4) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (3).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

D. "License" or "licensee," as used generally in this chapter, means, respectively, the City-issued document (whether or not said document is issued through the State of Washington Department of Revenue Business Licensing Service) that authorizes the person or entity to lawfully engage in business within Maple Valley; and the licensee is the person or entity to whom the City-issued license is issued.

E. "Person" includes the singular and the plural and also means and includes any individual, sole proprietorship, partnership, association, cooperative, corporation, and any other organization or agency required to register with the State of Washington and with the City to do business in the State of Washington and in the City and to obtain one or more licenses from the State of Washington or any of its agencies and from the City, and includes the United States or any instrumentality thereof.

F. “Premises” means and includes all lands, structures and places, and also any personal property which is either affixed to, or is otherwise used in connection with, any business conducted on such premises.

G. “City Manager” means the Maple Valley City Manager or his or her appointed designee. (Ord. O-12-503 § 1).

#### **5.35.020 Business license required.**

Unless exempted in this chapter pursuant to MVMC [5.35.030](#), no person shall ~~locate or~~ engage in any business ~~located physically~~ within the City without first having obtained from the City a valid and current business license to carry on that business. This license shall be in addition to any other licenses or permits required by any other section of this code or by State or federal law. Business licenses are nontransferable and a separate business license shall be obtained for each location at which a business operates within the City. Licenses shall be prominently displayed at each business location so as to be viewable by the public. (Ord. O-12-503 § 1).

#### **5.35.030 Exemptions.**

A. The following are exempt from obtaining a business license pursuant to the provisions of this chapter shall not apply to:

1. Minors, a person under the age of 18, engaged in babysitting, newspaper delivery, lemonade stands or similar activities; ~~doing business or operating a business concern where no other person is employed by the minor;~~
2. The United States or any instrumentality thereof and the State of Washington or any municipal subdivision thereof, including City of Maple Valley sponsored civic events;
3. Persons whose sole activity is the rental of real property;
4. ~~Casual or isolated sales made by persons who do not meet the definition of “secondhand dealer” as set forth in Chapter [5.05](#) MVMC, and are not engaged in the ongoing business of selling the type of goods involved; provided, that such sales do not meet the definition of “peddler” as set forth in Chapter [5.25](#) MVMC;~~
5. ~~The mere delivery of goods to the customer or client by businesses where the sale occurred on business premises located outside of the City limits, or via the Internet or over the telephone and where the vendor providing the goods has no physical location within the City limits, and where the sale does not involve real property;~~
- 6 4. Religious organizations;

~~7~~ 5. Charitable or nonprofit organizations or corporations which have received tax exempt status under 26 U.S.C. 501(c)(3) and have registered as a charitable organization pursuant to Chapter 19.09 RCW;

~~8~~ 6. Farmers selling fruit, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced or manufactured by such person; provided, that nothing herein authorizes any person to sell, deliver or peddle any dairy product, meat, poultry, eel, fish, mollusk or shellfish without a license as otherwise required by the State of Washington;

~~9. Persons operating at a properly permitted Saturday or “farmers” market so long as the activity does not occur more than one time per week for more than five months of each calendar year; and provided further, that the name, address and telephone number of each such person is provided in advance to the City of Maple Valley to be maintained in the City’s records; and~~

~~10. Sales conducted as “fundraisers” for youth athletic, scouting, or for school programs serving grades K through 12, or for police and fire department reserve organizations.~~

Nothing in this section is meant to exempt any of the above-mentioned groups from obtaining any necessary state or federal licenses.

B. The license fee portion of this chapter shall not apply to:

1. Fraternal benefit associations or societies as defined in RCW 48.36A.010;

2. Associations or clubs maintained for the purpose of organized sports, public school-related activities or quasi-municipal corporation-related activities such as police and fire department guilds or reserve organizations, all of which do not fall under the description of an organization described in subsection (A)(~~7~~5) of this section.

3. Vendors of the Maple Valley Farmer’s Market;

4. Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not maintain a place of business within the city. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

C. The organizers of a special event may apply for a limited special use permit pursuant to Chapter 5.05 MVMC, which will eliminate the need for individual business licenses for all vendors operating at the special event under the authority of the special event license. The special event licensee shall provide a copy of the special event license to each vendor operating at the special event. Each vendor must display a copy of the special event license

at the location within the special event. Special event licenses shall be valid only on the days authorized for the special event. (Ord. O-12-503 § 1).

**5.35.040 Issuance of licenses – Procedure and fees.**

A. Every person required to procure a license under the provisions of this chapter shall make application for a business license prior to locating and/or commencing business in the City. Application for a business license shall be accomplished by filing a master application through the Washington State Department of Revenue Business Licensing Service. The applicant shall be required to provide all information requested on the applicable form and failure to do so shall be grounds for refusing to issue the business license. In addition, the City Manager or his/her designee, from time to time, may request from a person holding a business license that they supply to the City an update of the information that was given on the original license application. Failure to supply said update as requested shall be sufficient grounds for revocation of the business license.

1. Persons applying for a license must pay a nonrefundable \$10.00 application fee, as well as the Washington State Department of Revenue Business Licensing Service handling fee. (Ord. O-12-503 § 1).

**5.35.050 Posting of license.**

Each person required to obtain a business license under this chapter shall at all times prominently display said license in the place of business for which it is issued so that it is viewable by the public. (Ord. O-12-503 § 1).

**5.35.060 Change of place of business.**

When the place (location) of business of a person required to obtain a license under this chapter is changed, the person shall inform the Business Licensing Service of the change. A change of place (location) of business shall require the filing of a new master application with the Washington State Department of Revenue Business Licensing Service. Upon approval by the City of the new place (location) of business, a new license shall be issued for the person's new place of business. (Ord. O-12-503 § 1).

**5.35.070 Ownership change – License not transferable.**

When a licensed business changes ownership, the license of the previous owner may not be transferred to the new owner. The new owner shall apply for a license for that business by filing a master application with the Washington State Department of Revenue Business Licensing Service. (Ord. O-12-503 § 1).

**5.35.080 Fraudulent use of business license.**

No person holding a City business license shall suffer or allow any other person for whom a separate license is required to operate under or display such person's license, and no person may maintain a business license obtained through a false or fraudulent application or return of any false statement or representation in or in connection with any such application or return for such business license. (Ord. O-12-503 § 1).

**5.35.090 Revocation of business license.**



The City Manager may revoke the license issued to any person required to obtain a business license who is in default in any payment of the business license fee or renewal fee or who shall fail to comply with any of the provisions of this chapter. Notice of such revocation shall be mailed via registered mail, return receipt requested, to the person by the City Manager's office, and three business days after placement in the mail any such person who continues to engage in business shall be deemed to be operating without a valid license and shall be subject to any or all penalties provided for in this chapter. The effective date of the revocation shall be tolled during any appeal of the revocation pursuant to MVMC [5.35.130](#), except where the City Manager has determined that the revocation is necessary to protect public health, safety or welfare. (Ord. O-12-503 § 1).

#### **5.35.100 License renewal.**

Persons continuing to engage in business within the City shall renew their business license(s) each year. Businesses must pay a nonrefundable \$10.00 renewal fee, as well as the State of Washington Department of Revenue Business Licensing Service handling fee. Persons not renewing their business license by the expiration date may be subject to a late renewal penalty charged by the State of Washington Department of Revenue Business Licensing Service. (Ord. O-12-503 § 1).

#### **5.35.110 Compliance with codes required.**

Notwithstanding any contrary provision thereof, a business license issued under this chapter shall not be issued to any person using or occupying any real property in violation of the provisions of the City's zoning, building and fire codes and ordinances and all amendments thereto; nor shall a business license be issued to any person who is operating or intends to operate in violation of any City code or ordinance and all amendments thereto, or who is operating or intends to operate in violation of any State or federal law. (Ord. O-12-503 § 1).

#### **5.35.120 Notice of noncompliance – Revocation – Final action.**

A pending application for renewal under this chapter shall be deemed in compliance with this chapter unless the applicant is notified by the City of Maple Valley in writing that said application may not be granted because of noncompliance with the provisions of this chapter, any other City code or ordinance, or State or federal law; except, pursuant to Washington State Initiative 502, two Washington State Liquor and Cannabis Board licensed marijuana retail facilities shall be authorized to operate within the City limits even though inconsistent with federal law. In the event such notice is given, the applicant shall have 30 days from the date of such notice to comply with any section violated under this chapter prior to final action upon said application for renewal unless an extension for compliance is granted by the City Manager or his/her designee. (Ord. O-17-619 § 3; Ord. O-12-503 § 1).

#### **5.35.130 Appeal to Hearing Examiner.**

Any person aggrieved under the provisions of this chapter may appeal to the Hearing Examiner pursuant to the applicable procedures outlined in Chapters [2.65](#) and [4.05](#) MVMC, and the applicable sections of King County Code Title 23. (Ord. O-12-503 § 1).

#### **5.35.140 Penalties and enforcement.**

A. It is unlawful for any person either directly or indirectly to conduct any business for which a license or permit is required pursuant to this chapter. Any violation of this chapter shall, in addition to any other penalties provided herein, be a misdemeanor and, upon conviction, shall be punished by up to 90 days in jail and up to a \$1,000 fine.

B. The City may revoke the license issued to any licensee who shall fail to comply with this chapter, or with any other ordinance or regulation of the City. Notice of such revocation shall be mailed to the licensee by the City Manager or his/her designee and, subject to MVMC [5.35.090](#), any such licensee who continues to engage in business shall be deemed to be operating without a license and shall be subject to any and all penalties herein provided.

C. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the designated code enforcement officer has reasonable cause to believe that a licensee is operating in violation of this chapter, the officer may enter such licensee's place of business, with or without a Maple Valley police officer, at all reasonable times, to inspect the same or perform any duty imposed on the officer by this or any other chapter of the municipal code; provided, that:

1. If the place of business is occupied, the officer shall first present proper credentials and demand entry; and
2. If the place of business is unoccupied, the officer shall first make a reasonable effort to locate the licensee and demand entry.

D. No person shall fail or neglect, after proper demand, to admit the designated code enforcement officer, while acting within the scope of his/her employment, to any place of business located within the City limits whether or not such business is properly licensed, or to interfere with the officer while in the performance of his/her duty.

E. Enforcement. The designated code enforcement officer is authorized to make such inspections and take such action as may be required to enforce the provisions of this chapter. Any criminal violations of this chapter shall be enforced by the Maple Valley police, Prosecutor, or City Attorney.

F. Penalties Not Exclusive. The penalties set forth herein are not exclusive. The City Manager or his/her designee may seek civil enforcement and civil penalties pursuant to Chapter [4.05](#) MVMC, in addition to any criminal penalties that may apply for violation of this chapter. (Ord. O-12-503 § 1).

#### **5.35.150 City Manager authorized to enter into State of Washington Department of Revenue Business Licensing Service agreement.**

The City Manager is hereby authorized, but not mandated, to enter into an agreement with the State of Washington Department of Revenue Business Licensing Service under which that agency shall accept and process City business license applications. In entering into

such agreement, the City shall at all times retain the right to approve all City business licenses. (Ord. O-12-503 § 1).

**Section 3. Severability.** If any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 4. Effective Date.** This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**Section 5. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary non-substantive corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF  
ON THE 24<sup>TH</sup> DAY OF SEPTEMBER 2018.

CITY OF MAPLE VALLEY

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Sean P. Kelly, Mayor

ATTEST/AUTHENTICATED:

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Shaunna Lee-Rice, City Clerk

Approved as to form:

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Patricia Taraday, City Attorney

Date of Publication: September 28, 2018

Effective Date: October 2, 2018